FILED
United States Court of Appeals
Tenth Circuit

April 5, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MELANIE BROWN,

Plaintiff - Appellant,

v.

TITAN PROTECTION & CONSULTING,

Defendant - Appellee.

No. 21-3122
(D.C. No. 2:21-CV-02122-SAC-TJJ)
(D. Kan.)

ORDER AND JUDGMENT*

Before **PHILLIPS**, **BALDOCK**, and **EID**, Circuit Judges.

Melanie Brown, pro se, appeals the district court's order dismissing her claims for discrimination and retaliation under Title VII of the Civil Rights Act of 1964 (Title VII) and the Age Discrimination in Employment Act of 1967 (ADEA). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

---

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. BACKGROUND

Ms. Brown worked as a security guard for Titan Protection & Consulting (Titan) from June 3, 2019, until August 16, 2019, when her employment was terminated. Her complaint alleged that on August 16, "[t]he defendant advise[d] m[e] to come into the office on my day off and we had a conference meeting about questions resulting to my unemploy[]ment. I, then responded with, no I have not filed unemployment, but I did with a different employer other than, Titan Protection & Consulting." R., Vol. 1 at 8. Attached to the complaint was the administrative complaint Ms. Brown filed on September 17, 2019, with the Kansas Human Rights Commission (KHRC), in which she alleged that her employment was "terminated due to my race, African-American, my color, medium skin toned, my sex, female, my age, fifty-eight (58), and as acts of retaliation for having openly opposed acts and practices forbidden by [Kansas law]. *Id.* at 12.

Titan filed a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). In her response in opposition, Ms. Brown explained her discrimination claim was based on Titan's actions on August 16 when it fired her because she "filed for unemployment through [Titan]," when the only unemployment she filed was "through [her] previous employer Allied Protection Security." *Id.* at 37. However, an exhibit attached to Ms. Brown's response revealed that Titan terminated her employment when it received information from a "DOL examiner[] [who] determine[ed] [on] 8/6/19 . . . that [Ms. Brown] provided false documentation with the purpose of unlawfully obtaining unemployment insurance benefits" from her

previous employer. R., Vol. 2 at 7. And as grounds for her retaliation claim, Ms. Brown stated that Titan "retaliated because of a [claim for unemployment she filed against a previous employer] through the Kansas Dep[artment] of [L]abor." *Id.* at 11.

After considering the complaint and the factual allegations in her response, the district court found that Ms. Brown failed to state plausible claims for relief and granted Titan's motion to dismiss.[1] Ms. Brown appeals.

II. STANDARD OF REVIEW

"We review a district court's dismissal under . . . Rule . . . 12(b)(6) de novo." *Khalik v. United Air Lines*, 671 F.3d 1188, 1190 (10th Cir. 2012). Also relevant to our review is the requirement that "[a]n appellant's opening brief must identify appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) (internal quotation marks omitted). This requirement applies to pro se litigants. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840-41 (10th Cir. 2005). As a result, "we routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief." *Bronson*, 500 F.3d at 1104.

[1] *See Hayes v. Whitman*, 264 F.3d 1017, 1025 (10th Cir. 2001) (recognizing that a "court [can] consider additional facts or legal theories asserted in a response brief to a motion to dismiss if they [are] consistent with the facts and theories advanced in the complaint").

Ms. Brown fails to advance any adequately developed arguments on appeal. For example, she never discusses the grounds on which the district court granted Titan's motion to dismiss, nor does she cite to any legal authority. But even if Ms. Brown had not waived the issues, our review reveals no error.

III. DISCUSSION

A. Rule 12(b)(6)

"Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Khalik*, 671 F.3d at 1190. "[T]o withstand a Rule 12(b)(6) motion to dismiss, a complaint must contain enough allegations of fact, taken as true, 'to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). *See also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (Rule 8(a)(2) "does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." (internal quotation marks omitted)). "[I]n examining a complaint under Rule 12(b)(6), we will disregard conclusory statements and look only to whether the remaining, factual allegations plausibly suggest the defendant is liable." *Khalik*, 671 F.3d at 1191.

"While the 12(b)(6) standard does not require that [the] [p]laintiff establish a prima facie case in her complaint, the elements of each alleged cause of action help to determine whether [p]laintiff has set forth a plausible claim." *Id.* at 1192.

B. The Failure to Plead Plausible Claims for Relief

"Title VII makes it unlawful 'to discharge any individual, or otherwise to discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.'" *Id.* (quoting 42 U.S.C. § 2000e-2(a)(1)). "A plaintiff proves a violation of Title VII either by direct evidence of discrimination or by following the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 . . . (1973)." *Id.* Because there is no direct evidence of discrimination in Ms. Brown's case, the burden-shifting framework applies.

> Under *McDonnell Douglas*, a three-step analysis requires the plaintiff first prove a prima facie case of discrimination. To set forth a prima facie case . . . , a plaintiff must establish that (1) she is a member of a protected class, (2) she suffered an adverse employment action, (3) she qualified for the position at issue, and (4) she was treated less favorably than others not in the protected class.

Id. (citation omitted). The fourth element is sometimes described as the requirement to show that "the challenged action took place under circumstances giving rise to an inference of discrimination." *EEOC v. PVNF, L.L.C.*, 487 F.3d 790, 800 (10th Cir. 2007).

"Title VII also makes it unlawful for an employer to retaliate against an employee 'because she has opposed any practice made an unlawful employment practice by this subchapter.'" *Khalik*, 671 F.3d at 1192 (brackets omitted) (quoting 42 U.S.C. § 2000e-3(a)). "A plaintiff can . . . establish retaliation either by directly showing that retaliation played a motivating part in the employment decision, or

indirectly by relying on the three-part *McDonnell Douglas* framework." *Id.* To state a prima-facie retaliation claim at the first step, "a plaintiff must show (1) that she engaged in protected opposition to discrimination, (2) that a reasonable employee would have found the challenged action materially adverse, and (3) that a causal connection existed between the protected activity and the materially adverse action." *Id.* at 1193 (brackets and internal quotation marks omitted).

Last, under the ADEA, it is "unlawful for an employer . . . to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). The *McDonnell Douglas* three-step framework likewise applies to claims of discrimination under the ADEA based on circumstantial evidence. *See Jones v. Okla. City Pub. Schs.*, 617 F.3d 1273, 1278 (10th Cir. 2010). To prove a prima facie case at step one, the plaintiff must show, among other things, that: (1) she belongs to the class protected by the ADEA; (2) she suffered an adverse employment action; and (3) she was treated less favorably than others not in the protected class. *See id.* at 1279.

The district court found that Ms. Brown failed to plead plausible claims of race, gender, or age discrimination. We agree. As the court explained, "[t]here are no factual allegations [in either the complaint or her responses to Titan's motion to dismiss] supporting Ms. Brown's conclusion that her termination was unequal or unfair or that she was treated disparately as to give rise to a[n] . . . inference of unlawful discrimination or retaliation." R., Vol. 1 at 61. Because Ms. Brown's

"complaint offers nothing more than legal conclusions that discrimination was behind Titan's employment decision," it fails to state plausible claims for discrimination. *Id.*

We also agree with the district court that Ms. Brown failed to plead a plausible claim for retaliation because her "complaints about being terminated for a prior unemployment benefit application and the fairness of the termination do not show any protected [opposition to discrimination]." *Id.* at 62.

IV. CONCLUSION

The judgment of the district court is affirmed.

Entered for the Court

Bobby R. Baldock
Circuit Judge